



REPUBLIC OF KENYA



KENYA LAW
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**Macharia v Republic (Criminal Appeal E021 of 2023)
[2025] KEHC 358 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL APPEAL E021 OF 2023
AK NDUNG'U, J
JANUARY 23, 2025**

BETWEEN

PETER KINYUA MACHARIA APPELLANT

AND

REPUBLIC RESPONDENT

*(From original Conviction and Sentence in Nanyuki CM
Sexual Offences Case No E006 of 2022– Ben Mararo, PM)*

JUDGMENT

1. The Appellant, Peter Kinyua Macharia, was convicted after trial of defilement contrary to Section 8(1) as read with Section 8 (4) of the *Sexual Offences Act*, No 3 of 2006. The particulars were that on diverse dates between 06/01/2022 and 15/01/2022 at Laikipia East subcounty within Laikipia County, intentionally and unlawfully caused his penis to penetrate the vagina of G.N. a child aged 17 years. On 13/02/2023 he was sentenced to fifteen (15) years imprisonment.
2. Being dissatisfied with the conviction and the sentence, he filed a petition of appeal dated 21/02/2023 and supplementary grounds of appeal accompanying his submissions. The conviction and the sentence are being challenged on the following grounds;
 - i. The learned magistrate erred by failing to note that he had no previous records.
 - ii. The learned magistrate erred by failing to note that the competence of the witnesses was compromised.
 - iii. The learned magistrate erred by failing to note that he was not subjected to medical examination.
 - iv. The learned magistrate failed to note that the case was not proved beyond reasonable doubt.



- v. The learned magistrate failed to note that he was not placed squarely on the crime scene.
- vi. That the sentence was harsh and excessive.

Supplementary grounds

- i. The learned magistrate erred convicting him whereas age of the victim and penetration were not proved.
 - ii. The learned magistrate erred convicting him based on hearsay evidence.
 - iii. The learned magistrate erred convicting him without appreciating that PW1's integrity, honesty and truthfulness were questionable.
 - iv. The learned magistrate erred convicting him on a case that was pegged on zero investigations.
 - v. The learned magistrate erred by failing to weigh his alibi defence against the weak prosecution's case.
 - vi. The learned magistrate erred sentencing him to a mandatory minimum sentence without considering his mitigation and non-aggravating nature of the offence.
3. The appeal was canvassed by way of written submissions. In his written submissions, he argued that PW1 was sent to the market but decided to run away and spend the night at Mama S's and this shows that she lacked integrity and her entire testimony was marred with contradictions and inconsistencies. Her behaviour revealed intentional, wilful adult behaviour. As to her age, he submitted that a faulty birth certificate was adduced as an altered copy dated 29/08/2004 was produced and PW2 admitted that PMF1 dated 29/08/2004 a copy, had been altered during games and the original birth certificate was at home. PW1 identified a birth certificate dated 29/04/2004 but written 29/08/2004. PW5 produced the birth certificate and gave a different date of birth as 14/12/2004. Therefore, three birth certificates were adduced purportedly belonging to the complainant. That there was a forgery of the birth certificate. It therefore follows that PW1 was an adult as she acted on her own accord without coercion from anybody which is an indication of adult behaviour envisioned under section 8(5) and (6) of the SOA.
4. As to penetration, he submitted that he was arrested alone as he was not found with PW1. That the evidence was that PW1 had visited his mother and a mama S who had a son named N. No evidence was adduced as to who Mama S was and how old N was which leaves a lot of unanswered questions. PW5 testified that while he was interviewing him, PW1 called and said she was in Karatina whereas PW1 testified on cross examination that she was found at his place and they were taken to hospital. PW2's evidence also shows that PW1 was not found at his mother's place or his place. That this points out that PW1 was not a straightforward person and her errant behaviour dented her credibility and integrity. The trial court also failed to comply with Section 199 of the Criminal Procedure Code by failing to assess the demeanour of PW1 while testifying.
5. As to medical evidence, he submitted that the same was null and void as it was not produced by its maker. PW4 did not inform the court whether he was familiar with the maker's handwriting and signature and no evidence was adduced as to whereabouts of the maker and whether the maker was a colleague or not which was a foul Section 77 of the Evidence Act. Further, the medical evidence revealed nothing unusual as there were no signs of a recent sexual encounter. That the clinical officer who examined PW1 did not form an opinion of penetration.



6. As to his defence, he submitted that Section 212 of the Criminal Procedure Code provides that if an accused introduces a new matter in his defence, the prosecution is allowed to rebut. That the prosecution had a duty to prove that PW1 was in his company during the alleged time, had a duty to inform the court whether he had a family or not and it was their duty to verify that information and therefore the prosecution failed to rebut his defence.
7. In regard to the sentence, he urged the court to relook at the sentence based on his mitigation and on the fact that superior courts have frowned upon mandatory minimum sentences on account that they deny the trial court the discretion to sentence an accused person.
8. In rejoinder, the Respondent's counsel argued that an original birth certificate was produced by PW5 which shows that PW1 was born on 14/12/2004 hence she was 17 years at the material time. That there was only one birth certificate that was produced in court contrary to his allegations that PW1, 2 and 5 produced 3 different birth certificates. That courts have accepted birth certificate as conclusive proof of facts contained therein as was held in *ASK v Republic (Criminal Appeal 59 of 2021(2023) KECA 719 (KLR)*. On allegation of forgery, she submitted that it was a speculative allegation which would not be tried in a defilement case.
9. Asserting the penetration was proved, it is submitted that the Appellant did not controvert the complainant's evidence that she had sex with him on material dates. That the Appellant only concentrated on the question whether the complainant was found at his place or not. That even without medical evidence, complainant's evidence remained uncontroverted. That the complainant might not have used the sensory details by mentioning insertion of the penis in her vagina but based on her age, it is not farfetched that by alluding to sex, she meant sexual intercourse as courts have accepted that children are affected by several factors which affect their willingness and readiness to give explicit details of sexual encounter and in *Wachira v Republic (Criminal Appeal E024 of 2023) (2024) KEHC 5972 (KLR)* the court appreciated the impact of developmental stages in children and how the same might affect their ability and willingness to describe sexual organs and the act.
10. Further, penetration was proved by PW4 who testified that the hymen was broken and there was presence of pus cells. Further, there is no indication that the PRC and P3 forms were filled by someone else and she could not comment further as the record of appeal did not have the said documents to deduce whether the same was filled by PW4 or someone else. That Section 77(2) of the *Evidence Act* shows that those documents enjoy a presumption of signature and correctness. That even if PW4 was not the maker, the same would not be fatal as the medical evidence is not only the evidence upon which he was found guilty as there was overwhelming evidence by the complainant.
11. In regard to identification, counsel submitted that the complainant testified that she was Appellant's girlfriend and he had an opportunity to commit the offence as the complainant was at his house on the material dates and the Appellant partially conceded that the complainant was at his mother's home where he also lived as per the testimony of PW1, 2 and 3. He cannot therefore distance himself from the scene of crime.
12. As to non-compliance with Section 199 of the Criminal Procedure Code, it is submitted that this cannot vitiate a conviction since the said section gives the court the room to record the demeanour when it thinks it is material. Further Section 382 of the Code states that no judgment may be reversed on account of alleged omission unless the said omission has occasioned a failure of justice. Reliance was placed on the case of *KG Y v Republic (2020) eKLR* where the court held that failure to record the demeanour is discretionally and not mandatory.



13. Counsel urged that the Appellant's defence was unsworn which has a diminished probative value as when certain things are alleged in his defence, the prosecution is not given a chance to test such evidence. That his unsworn defence was uncorroborated as he did not call his mother to confirm that PW1 interacted with his mother and not him. Further, he did not allude to any grudge that would make the witnesses frame him. As to his alibi defence, it is submitted that the same was not pleaded at earliest possible instance and at no point did he put it that he was not at home but at a construction site during the prosecution's case. As to his submissions that the prosecution was supposed to call rebuttal evidence, it is urged that according to Section 111 of the Evidence Act, it was upon the Appellant to prove that he was at work since those were the facts within his knowledge and ought to have called a witness to corroborate his alibi. Further, he did no mention where he was working and did not produce any material to support his allegation. As to the defence provided under Section 8(5) of the Sexual Offences Act, it is submitted that the same was not raised during trial nor defence.
14. On the sentence, counsel submitted that the sentence was in line with the law as Section 8(4) provides for a sentence of not less than 15 years. Further, the Appellant did not mitigate before the trial court and that the Supreme court in R v Joshua Gichuki Mwangi & others Petition No. E018 of 2023 clarified that the Muruatetu case does not apply to minimum sentences under the Sexual Offences Act. Therefore, there is no discretion to lower the sentence.
15. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. See Okeno v Republic [1972] EA 32.
16. The evidence before the trial court was as follows. PW1 the complainant testified that on 06/01/2022, she was sent to Timau to buy sukuma wiki but she did not return home since she was late. She slept at Mama C's place who lives with her daughter and son N and on 7th, she slept there but the next day, she went to the Appellant's place who was her friend. She slept at his mother's up to on 9th. Their relationship developed and the Appellant became her boyfriend and from 10th up to 15th, she slept at the Appellant's place and at that time, they had sex without protection. That he had a separate house which was three roomed. That he would go to work during the day and she would be left in the house and on Thursday when he came from work, a MW saw her. She went to Appellant's mother who informed her that she was required at police station where she went and recorded her statement and taken to hospital. She identified her birth certificate dated 29/04/2004 but written 29/08/2004 which she stated was altered.
17. She testified on cross examination that she was found at the Appellant's place and they were taken to hospital together.
18. PW2, the complainant's mother identified her birth certificate dated 29/08/2004 and stated that a copy had been altered during games but the original was at home. On 06/01/2022, the complainant left home and she did not return. On 10/01/2022, Appellant's mother went to her home and informed her that the complainant was at her place but in the evening, she said the complainant was not at her place. They went to Nyumba kumi and Appellant's mother place but they did not find her there. She testified that the Appellant lived at their home and he told them that he did not know where the complainant was. That the complainant returned on Saturday and she informed her that she was told not to leave and that they had sex. She testified that she knew the Appellant well.
19. PW3, a member of nyumba kumi testified that she knew the Appellant as he was from her area. She was approached by Mama N who informed her that her child had disappeared and said that a lady had gone to her place and informed her that her child was at her home. Later, the Appellant's mother called



- and said that the child had disappeared. They went to her place and the Appellant's mother informed them that the child disappeared when she left to report. She called the lady the next day and she said that the child had not been found. She was later called and informed that the child had been found.
20. PW4, Salat Nguyo, the clinical officer testified that on examination, there were no injuries to genitalia, no discharge, VDRA negative, HIV test was negative, pregnancy was negative, urinalysis was normal, pus cells seen on high vaginal swab, no yeast seen, no spermatozoa and hymen was broken (not fresh). He produced the P3 form and PRC form as Pexhibit 2 and 3 respectively.
 21. PW5, the investigating officer testified that PW3 made a report of a missing child who had disappeared on 10th and further reported that mama B had visited her and told her that the complainant was at her home for 2 days and that she will bring her. They visited her home and the child was missing so they arrested the mother and the Appellant. As they were interviewing the Appellant, the complainant called and said that she was in Karatina. They promised to bring the girl on 18th. The Appellant's mother took her to police station on 14th and the complainant informed him that from 13th, the Appellant took her and locked her for four days and they engaged in sex. He testified that he took the complainant to hospital and that he had her original birth certificate dated 14/12/2004 which he produced as Pexhibit1. He produced the investigations diary as Pexhibit4. That the complainant was there from 10th-14th and between 6th and 10th, she was at the Appellant's mother but between 10-16th she was at Appellant's.
 22. He testified on cross examination that the complainant was brought by the Appellant's mother.
 23. In his unsworn defence, the Appellant testified that he is in construction and only goes home on weekends to take food to his wife and children. That he had never seen the complainant at his place as she had never fought with his wife. He was arrested and was told that he had done wrong but he did not know why he was charged. That he sees his mother once a month and the complainant had visited his mother but did not see her.
 24. That was the totality of the evidence before the trial court. It is trite that for the charge of defilement to stand, the Prosecution must prove the age of the victim (must be a minor), that there must be penetration and a clear identification of the perpetrator. This is provided for under Section 8(1) of the [Sexual Offences Act](#) No. 3 2006.
 25. Having established the ingredients of the charge, the question that this court should therefore determine is whether those ingredients were proved to the required standard.
 26. Proof of age is important in a sexual offense. In *Kaingu Kasomo vs. Republic*, Criminal Appeal No. 504 of 2010 (UR), the Court of Appeal stated that:

“Age of the victim of sexual assault under the [Sexual Offences Act](#) is a critical component. It forms part of the charge which must be proved the same way as penetration in the cases of rape and defilement. It is therefore essential that the same be proved by credible evidence for the sentence to be imposed will be dependent on the age of the victim.”
 27. In the present appeal, the complainant's age is disputed. The Appellant's claim is that age was not proved since the witnesses gave different dates as to when the complainant was born. He submitted that a faulty birth certificate was adduced as an altered copy dated 29/08/2004 was produced and PW2 admitted PMF1 dated 29/08/2004, a copy, had been altered during games and the original birth certificate was at home. PW1 identified a birth certificate dated 29/04/2004 but written 29/08/2004. PW5 produced what he said was the original birth certificate and gave a different date



of birth as 14/12/2004. Therefore, three birth certificates were adduced purportedly belonging to the complainant.

28. PW1 testified that she was 17 years old. She was shown her birth certificate (PMF1) and testified that it was dated 29/04/2004, and written 29/08/2004 and that it was altered original birth certificate (sic). That she had taken PMF1 to school. PW2 the complainant's mother testified that the complainant was 17 years old born on 2004. She identified PMF1 with a date of 29/08/2004 and stated that a copy had been altered during games and the original was at home. PW5 testified that he had the original birth certificate which indicated that she was born on 14/12/2004. In inexplicable circumstances he produced the birth certificate marked PMF1 which is the birth certificate that PW1 identified with a date 29/4/04 but altered to 29/8/04 as Exhibit1.
29. The PRC form, Pexhibit 3 indicted the complainant's date of birth as 29/04/2004 and the P3 form indicated that she was 17 years old. A copy of birth certificate on record shows that the complainant was born on 29/04/2004. The trial court while finding that age was proved held that the complainant testified that she was 17 years old and referred to her birth certificate which indicated that she was born on 29/04/2004. The medical documents P3 and PRC forms indicated that she was 17 and therefore the court was satisfied that she was 17 hence a child as per Section 2 of the Sexual Offences Act.
30. It is trite law that, where the actual age of the victim is not proved, it has been held that the apparent age of the victim shall suffice. The Court of Appeal in Jackson Mwanzia Musembi v Republic [2017] eKLR quoted with approval its earlier decision in Evans Wamalwa Simiyu vs. R. [2016] eKLR and held that:-

“Consequently, where actual age of a minor is not known, proof of his/her apparent age is sufficient under the Sexual Offences Act.”
31. Further, in Thomas Mwambu Wenyi v Republic (2017) eKLR the Court of Appeal cited with approval Francis Omuromi Vs. Uganda, Court of Appeal Criminal Appeal No.2 of 2000 which held that:-

“In defilement cases, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may be proved by birth certificate, the victim's parents or guardian and by observation and common sense....”
32. In Evans Wamalwa Simiyu (supra) the Court of Appeal observed that –

“As to whether the appellant's age fell within 12 and 15 years of age, the evidence was rather obscure. Although the complainant testified that her age was twelve years, she did not explain the source of this information. The Complainant's mother did not offer any useful evidence in this regard as she did not say anything about the complainant's age. This leaves only the evidence of Dr. Mayende who indicated at Part C of the P3 form that the estimated age of the complainant was 12 years. We have anxiously considered the purport of this evidence since the Doctor does not appear to have carried out a specific scientific age assessment. Nevertheless we do note that under part C of the P3 form the age required is estimated age and under the Children's Act “age” where actual age is not known means apparent age. This means that in the Doctors opinion the apparent age of the complainant from his observation was 12 years. Thus, although the actual age of the minor complainant was not established, the apparent age was established as 12 years.”



33. What emerges from the authorities is that whilst the best evidence of age is the birth certificate followed by age assessment, the minor's parent evidence of the complainant's age together with the combination of all other evidence available can be relied on to determine the age of the complainant.
34. In the instant appeal, there is no medical assessment of the age of PW1. The mother to PW1 did not give oral evidence on the age of PW1. The evidence adduced in respect of age is bizarre. PW1 and PW2 refer to a birth certificate giving the date of birth of PW1 as 29/4/04 and which they say without cogent explanation that was altered at school and written 29/8/04. The issue is compounded by the evidence of the investigating officer (PW5) who refers to a birth certificate giving the date of birth as 14/12/04.
35. From the record of appeal and the original record of the trial court, I have only seen a copy (uncertified) of a birth certificate giving the date of birth of PW1 as 29/4/04. The contradictions in respect of the age of PW1 are in my view irreconcilable. With due respect, the trial court in a flippant manner reached a conclusion that the age of PW1 was proved without resolving the inconsistencies and contradictions on age. The court relied on the birth certificate indicating a birth date of 29/4/04 without any regard to the 'original' birth certificate showing date of 14/12/04.
36. Having introduced evidence of birth certificate(s), it was no longer open for the prosecution to rely on prove of age through the other recognized means of prove of age of evidence of a parent or observation as held in *Francis Omuroni vs Uganda, Court of appeal Criminal Appeal No. 2 of 2020* which the trial court erroneously applied without resolving the contradictions aforesaid.
37. As to penetration, the appellant attacked the medical evidence on account that the same was not produced by its maker in line with section 77 of the *Evidence Act*. This is not the case as PW4 did not state that he did not prepare the PRC and the P3 form or they were prepared by a different clinician. Further, I have perused the PRC and P3 form and they bear the name of Salat at the signature part and the clinical officer who testified was Salat Guyo.
38. As to whether penetration was proved the clinical officer testified that the genitalia was normal, hymen was broken but not fresh, tests done were negative apart from the pus cells that were seen. He did not say whether there was proof of penetration or not.
39. Thus, the medical evidence did not corroborate PW1 evidence as the medical report and the clinical officer did not hold an independent opinion of a possible recent signs of penetration.
40. It is trite that penetration is not necessarily proved by medical evidence only. In *Kassim Ali v Republic Cr. App. No. 84 of 2005 (Mombasa)* it was held thus;
- “The absence of medical evidence to support the fact of rape is not decisive as the fact of rape can be proved by the oral evidence of a victim of rape or by circumstantial evidence.”
41. This is in line with Section 124 of the *Evidence Act* which states that;
- “Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (Cap. 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:
- Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim



and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.”

42. However, Section 124 of the *Evidence Act* can only be complied with if the “reasons are recorded in the proceedings indicating that the Court is satisfied that the alleged victim is telling the truth”.
43. The facts in this appeal present a rather puzzling scenario. Evidence is led that PW1 disappeared and went to the home of the mother to the Appellant where she spent 3 days, then joined the Appellant in his house in the same compound where they had sex.
44. Curiously, the prosecution did not find it necessary to call the mother of the appellant as a witness despite PW2 stating that the said mother reported to her that PW1 was in her place. This was a competent and compellable witness and the failure to call her draws an adverse inference.
45. The applicable principle was stated in *Bukenya & Others v Uganda* [1972] EA 549 that;

“The prosecution must make available all witnesses necessary to establish the truth, even though their evidence may be inconsistent the court has the right and the duty to call any person whose evidence appears essential to the just decision of the case where the evidence call barely is adequate the court may infer that the evidence of uncalled witnesses would have tendered to be averse to the prosecution.”
46. There is evidence from PW5 that he arrested the Appellant and the mother when the report of a missing person was made. As he interviewed the suspects, PW1 called and said she was in Karatina. It is not explained how and for what reason she had gone to Karatina. This was necessary to draw a nexus with the incident forming the basis of the charges the Appellant faced. This witness fails the reliability test.
47. On reliability and credibility of a witness, Lord Clarke in *Jenctons v HMA* [2011] HCJAC SCL 927 stated:

“It is important to have in mind that while questions of credibility and reliability are said often to shade into each other, they are distinct concepts. A witness may come across as entirely credible but, on reflection, be held to be unreliable. A person who is credible is one who is believed. A person who is reliable is one upon whom trust and confidence can be placed on credibility may be judged on the evidence, whereas reliability may be only capable of being addressed having regard to the various traced record.”
48. For the court to base a conviction on the uncorroborated evidence of a victim of sexual offence, such evidence must be firm and reliable and must not harbor any predisposition to an untruth. The evidence of the complainant needed further interrogation to test its veracity.
49. As it were the evidence of penetration in this matter is of the victim only. It is good evidence within the latitude afforded by section 124 of the *Evidence Act*. But that section requires full compliance before a conviction can be based on such evidence.
50. The trial court based its conviction on the evidence of PW1 and PW4, the clinical officer. I have perused the evidence and I note the medical evidence did not demonstrate any indications of a recent sexual activity.
51. The evidence that remains in support of the charge is that of PW1. This is the evidence of the victim. To base a conviction on this evidence, Section 124 of the *Evidence Act* would require the court to receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.



52. There is no such indication on the record of the trial court. The Court of Appeal in *John Mutua Munyoki v Republic* [2017] ably interpreted the requirement under Section 124 of the *Evidence Act* as follows;

“The trial court felt that the complainant was a truthful witness worth of believing. But given what we have stated regarding her credibility we doubt whether this assessment is correct. In reaching this conclusion which was also adopted by the High Court, the trial court was trying to rely on the proviso to section 124 of the *Evidence Act*. However we think that the trial court went about it the wrong way. What is required as we have already pointed out is for the trial court to be satisfied first, that the victim is telling the truth and thereafter record reasons for such belief. It was thus not sufficient for the trial court to have merely held that, “therefore owing to the nature of the offence, having duly warned myself wish to state that I believe that the child herein, PW1 was telling the truth of the occurrences of the material night when the accused was taking her to school.” What or where are the reason(s) for the belief?”

53. Further clarity on the need to record the reasons for believing a witness is found in the High court decision in *Robert Wekesa Simiyu v Republic* [2019] eKLR where the court held that;

“If a child gives clear and concise evidence that is not easily shaken, that would be a parameter for measuring the truthfulness of the witness. All that Section 124 of the *Evidence Act* requires is that the reasons for believing the witness be recorded. There are no strait-jacketed reasons that must be recorded. What matters most is the impression made on the trial magistrate by the overall evidence of the witness. Those are the reasons he must record.” (emphasis added).

54. The requirement to record the reasons for believing the evidence of a victim of a sexual offence is couched in mandatory terms. In our instant case, the only available prosecution evidence was that of the complainant. That evidence lacked corroboration whatsoever as even the medical report did not confirm penetration. Section 124 of the *Evidence Act*, however, would still have allowed a conviction to stand if the trial magistrate had complied with the requirement to record the reasons why the court believed the evidence of the complainant.
55. As observed earlier, this being a first Appellate court, am duty bound to re- evaluate the evidence and make my own independent findings thereon. However, I have to be alive to the fact that I never saw neither heard the witnesses testify. Certainly, this court is disadvantaged in that it had no occasion to observe the demeanour of the witnesses and particularly, the complainant, whose sole evidence was the basis of the conviction herein. That opportunity was a preserve of the trial court.
56. Granted, a sexual offence is a very serious intrusion and violation against any individual. I would place it high up even above a robbery given the resultant lifelong trauma and attendant dangers including possible exposure to life threatening diseases. On the other hand, and tied to the seriousness of a sexual offence, parliament in its wisdom has prescribed very stiff penalties for perpetrators. The scales of justice would demand that a prosecution of a sexual offence must be meticulously undertaken and all legal requirements adhered to by all players including the trial court.
57. The failure by the trial court to comply with the requirement under Section 124 of the *Evidence Act* renders the conviction of the Appellant unsafe.



58. With the result that the appeal herein has merit. It is allowed in its entirety. The conviction is quashed and sentence set aside. The Appellant is to be set at liberty forthwith unless otherwise lawfully held under another warrant.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JANUARY 2025

A.K. NDUNG’U

JUDGE

